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September 8, 2020

Hon. William F. Kuntz
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: USA v. Khusanov,
17-CR-00475 (WFK)

Dear Judge Kuntz:

During our telephonic court appearance on August 14, 2020, Your Honor asked defense counsel to suggest how trial can proceed, as scheduled, on October 19, 2020 consistent with Mr. Khusanov's constitutional rights, and assuming Mr. Khusanov is not granted bail. The short answer is, it cannot. Therefore, we request a two-month adjournment of trial, to December 14, 2020. Counsel for the government has advised us that it does not object to that adjournment. However, consistent with the Court's direction, we address below the minimum accommodations necessary to maximize the possibility that Mr. Khusanov's constitutional rights are protected.

1. Pretrial Meetings with Mr. Khusanov:

- a. The Court should order the Government to immediately load an Internet-disabled laptop computer with all non-classified discovery, as well as any de-classified discovery it intends to use at trial and, further, order the MDC to permit Mr. Khusanov to keep this computer in his cell or, at the least, to have access to it during waking hours.
- b. The Court should order the Marshals and the MDC to make Mr. Khusanov available to meet in person with defense counsel in a large, well-ventilated room in the courthouse or at the MDC as often as we believe necessary for trial preparation, giving the Marshals and/or MDC 24-hour notice for each such meeting. The assigned room should be sanitized before and after each such meeting, and the Marshals and/or MDC should be directed to notify defense counsel if the room has been used by others on the same day as a scheduled meeting.
- c. To assure the safety of Mr. Khusanov, defense counsel and defense counsel's staff, the Court should order the MDC to test Mr. Khusanov for COVID-19 at least twice weekly, utilizing a test that provides results within 24 hours, said results being accessible to Mr. Khusanov and defense counsel.

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- d. The Court should prohibit the MDC from quarantining Mr. Khusanov or housing him in the Secure Housing Unit of the prison unless there is reason to do so, independent of his trial preparation, and subject to the Court's supervision and review. It is our understanding, for example, that defendants who are brought to court are quarantined for 14-21 days upon return, without access to typical inmate privileges, computers, or case materials.
- e. When Mr. Khusanov meets with counsel at the courthouse or MDC, he should be permitted to bring his laptop computer and computer charger and be given access to an outlet to keep his computer charged.
- f. If meetings are arranged at the courthouse, Mr. Khusanov should be given reasonable accommodations for meals and use of the restroom.
- g. The Marshals should present the Court with a plan for safely transporting Mr. Khusanov to and from the courthouse.
- h. The Marshals and the MDC should be reminded to treat Mr. Khusanov respectfully at all times during transportation to and from the courthouse and within the courthouse.

We have discussed the above requests with the assigned prosecutors, who have been in communication with the MDC. To date, however, the MDC has not fully responded. Nor have any in-person meetings been arranged. Based on our review of the MDC's plans for re-starting attorney visits, we believe that our requests likely cannot be accommodated.

- 2. Pretrial Production of 3500, Exhibits and Witness Lists: The government and defense counsel have agreed to a schedule -- whatever the trial date -- for pretrial disclosures, including 3500 material, witness lists, expert notice, government exhibit books, in limine motions, etc. and will present that schedule to the Court for its review.
- 3. Trial: We are aware of the EDNY plan for the resumption of trials. This plan does not, however, address all critical defense functions and other important matters. Trial should not commence until:
 - a. Prospective witnesses for both parties can safely travel to and from the New York area for trial preparation and testimony.
 - b. Prospective jurors can safely use public transportation, thereby assuring that certain groups are not disproportionately excluded.
 - c. Prospective jurors can safely participate in voir dire without masks as it is difficult to speak clearly or communicate effectively through a mask and impossible to read facial cues when masks are worn.
 - d. Jurors can safely sit in the jury box rather than in the audience so that counsel can observe the jurors, and counsel do not have their backs to jurors when questioning witnesses.
 - e. Counsel and Mr. Khusanov can safely sit near one another and converse freely and in confidence.
 - f. Defense counsel and the government can converse freely inside the courtroom whenever necessary.
 - g. Mr. Khusanov's family and friends can safely observe the trial from the audience.

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- h. The public can safely observe the trial from the audience.
- i. Counsel can question witnesses without masks, and witnesses can testify without masks.
- j. Defense counsel may have reasonable access to Mr. Khusanov, before, during and after each trial day as well as on weekends.
- k. Mr. Khusanov can safely participate without being quarantined during the course of the trial, unless the quarantine is required for a reason independent of trial, and subject to the Court's supervision and review.

Respectfully submitted,

/s/

Richard Levitt
Deborah Colson
Attorneys for Dilshod Khusanov

cc: (all counsel – via ECF)